CF0000062316

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR, MP.

Criminal Appeal No.2508 /99.

APPELLANT. (IN JAIL) : Arun Sharan Singh, S/o. Radheshwar Sharan Singh, aged about 32 years, R/o. Village-Gonda, PS- Pratappur District-Sarguja, MP.

-Versusu-

RESPONDENT. : The State of M.P. through PS- Pratappur District-Sarguja, MP.

CRIMINAL APPEAL U/S. 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

CONVICTION	SENTENCE.
1. u/s. 302 IPC	Life Imprisonment and fine of Rs. 5,000/-. In default of payment 5 months RI more.
2. u/s. 316 IPC	5 years RI and fine of Rs. 500/-. In default of payment 1 months RI more.

SENTENCES TO RUN CONCURRENTLY AND SENTENCE ALREADY UNDERGONE TO BE ADJUSTED.

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE MR. L.C.BHADOO,
& HON'BLE MR. DILIP RAOSAHEB DESHMUKH, JJ

22.6.2005

Mr. Abhay Tiwari, counsel for the appellant.

Mr. U.N.S. Deo, Govt. Advocate for the State.

Oral.

In view of Supreme Court's order dated 17.12.2004 passed in S.L.P. (Criminal) No.3696/2004, this appeal is heard for final disposal.

Accused/appellant Arun Sharan Singh has preferred this criminal appeal under Section 374(2) of the Cr.P.C. being aggrieved by the judgment of conviction and sentence dated 10.09.1999 passed by learned Additional Sessions Judge, ~~Surguja~~ Surajpur in S.T.No.113/98 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 & 316 of the Indian Penal Code, sentenced him to undergo imprisonment for life and to pay fine of Rs.5000/-, in default of payment of fine to further undergo R.I. for 05 months, and to undergo R.I. for years and to pay fine of Rs.500/-, in default of payment of fine to further undergo S.I. for 01 month respectively. It was further directed that both the sentences shall run concurrently.

In brief, the prosecution case is that on 22.8.1997 at about 7 to 10 a.m. in the morning the accused/appellant committed murder of his wife Pratima Singh by pressing her neck & chest and thereafter, he took her for treatment to Primary Health Centre,

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Pratappur and disclosed to the doctor that she has consumed *Kaner* fruit. The doctors declared Pratima Singh as brought dead and informed the police station Pratappur vide Ex.P-14. On receiving the information, Sub-Inspector Shri Anand Ram Lohvanshi (PW-11) registered the merg intimation (Ex.P-13), left for the scene of occurrence and requested the doctor to conduct the post mortem examination of the dead body. Dr. Smt. Subhadra Paikra (PW-1) conducted the post mortem on the body of Pratima Singh and prepared the post mortem report Ex.P-1 in which she opined that cause of death is asphyxia due to pressing of neck & chest and nature of death is homicidal. On dissection she noticed that thyroid cartilage was fractured, brain was congested, both heart chambers were full of dark fluid blood; spleen, kidney, lungs & liver were congested. At the time of postmortem the doctor also noticed that deceased Pratima Singh was pregnant, the child was found dead and the cause of death of the child was asphyxia due to blood circulation and oxygenation of blood is block. The doctor had further mentioned that fetus was well developed, weight of the child was about 3 kilogram and report to this effect is Ex.P-2. On receiving this report, the Station House Officer, Pratappur registered Crime No. 116/97 under Section 302 of the I.P.C. During investigation, the Investigating Officer found that deceased Pratima Singh was at the stage of advance pregnancy as she was having a male child aged about 8 months in his womb. It was also came to the notice of Investigating Officer that accused/appellant was in the habit of drinking alcohol and thereafter, used to beat

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and abuse his wife. The accused/appellant also used to threaten his wife that he will finish her and on the fateful day also accused/appellant assaulted his wife Pratima Singh and after felling her down on the earth he pressed her neck after sitting on her chest. After completion of investigation, charge sheet was filed against the accused/appellant for commission of offence under Section 498-A, 302 & 316 of the I.P.C. in the Court of Judicial Magistrate, Surajpur, who in turn committed the case to learned Sessions Judge, Surajpur from where learned 1st Additional Sessions Judge, Surajpur received the case on transfer.

Learned Additional Sessions Judge, after hearing the Additional Public Prosecutor, counsel for the accused/appellant and perusal of the papers available on record, was of the opinion that prima-facie case for commission of offence under Sections 302 & 316 of the IPC was made out, accordingly, he framed the charge. However, the accused/appellant pleaded not guilty. In order to prove the charge the prosecution examined as many as 11 witnesses and thereafter, learned Additional Sessions Judge recorded the statement of accused/appellant under Section 313 of the Cr.P.C. in which he denied the evidence of prosecution and stated that he never assaulted his wife, his daughter has given evidence against him because she is residing with his maternal uncle and in the last he stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor, counsel for the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

appellant and perusal of evidence on record convicted the accused/appellant as mentioned in the earlier part of this judgment.

We have heard Mr. Abhay Tiwari, counsel for the accused/appellant & Mr. U.N.S. Deo, Govt. Advocate for the State.

As far as the death of deceased Pratima Singh being concerned as homicidal, counsel for the accused/appellant has not disputed this fact. Dr. Smt. Subhadra Paikra (PW-1), who conducted the post mortem on the body of deceased Pratima Singh, has stated that on dissection of the body she noticed that beneath the skin of throat the clotted blood was present, wind-pipe was reddish, thyroid bone was found fractured, in both heart chambers black colour blood was present, kidney, lungs and liver were congested, eight months dead male child was found in the womb and the cause of death of that child was asphyxia due to pressing of neck & chest of the deceased and the death of deceased was homicidal in nature. She has further stated that 08 months male child which was found dead in the womb on account of non-supply of oxygen and her report to that effect is Ex.P-2. Therefore, in view of the above evidence and evidence of PW-6 Kum. Ranu-daughter of accused, who has stated that his father has assaulted her mother and also pressed the neck, it is proved that nature of death of deceased was homicidal.

Now coming to the involvement of accused/appellant in committing the murder of deceased Pratima Singh. The conviction of the accused/appellant is based on the evidence of PW-6

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Kum. Ranu, who is the daughter of deceased and accused. Kum. Ranu has stated in her evidence that her mother's name is Pratima Singh, in those days she along with her mother, father, sister-Golu and Babu were leaving in the house of one Gonda, on the date of incident her father assaulted her mother with club, chappal and slaps, at that time she & Golu were present near the door, her father pressed the neck of her mother and thereafter, quarrel stopped. In order to ascertain the fact whether this witness understands the questions and whether she is wise enough to give reply of the same, learned Additional Sessions Judge put five questions to her and after considering the answers given by this witness reached to the conclusion that this witness was intelligent enough to understand the questions and to give reply, therefore, he recorded the evidence of this witness.

We have gone through the evidence of PW-6 and whatever has been stated by this witness stands corroborated by the evidence of Dr. Smt. S. Paikra (PW-1), who conducted the postmortem on the body of deceased Pratima Singh in which she has stated that on dissection she found that thyroid bone of deceased Pratima Singh was fractured and evidence of PW-6 was to the effect that his father pressed the neck of her mother, therefore, this medical evidence corroborates the evidence given by this child witness. Even a letter was written by deceased Pratima Singh to his brother Dr. Girdhar Singh (PW-8), who has stated in his evidence that Pratima Singh was his younger sister, she was married to the accused/appellant and after marriage she gave

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

birth to two female child. He has further stated that deceased Pratima Singh used to come to his place and used to tell him that accused/appellant is harassing and beating her by saying that her brother has not given any dowry item in the marriage and thereafter, she used to show the injuries caused by accused/appellant on her body. She used to sent letters to him and in those letters also she used to mention about the threatening and beating given by the accused/appellant and in this respect one letter (Ex.P-7), which was written by deceased to this person, was produced by him before the police which was taken into possession by the police under Ex.P-8.

Now coming to the law on the point regarding value and reliability, which can be attached to the evidence of a child witness. The Hon'ble Apex Court in the matter of **Panchhi and others V. State of U.P.** reported in **1998 Cri. Law Journal 4044** held that " *evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and thus a child witness is an easy prey to tutoring.*" In the matter of **Ratan Singh Dalsukhbhai Nayak Vs. State of Gujarat** reported in **2004 Supreme Court Cases (Cri.) 7** the Hon'ble Apex Court has held that " *conviction can be based placing reliance on the evidence of child witness provided such witness is found competent to testify and the Court after careful scrutiny of its evidence is convinced about the quality and reliability of the same.* The court has further held that in order to ascertain the intelligence of the child witness

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the child can be allowed to testify if it has intellectual capacity to understand the questions and give rational answers thereto; the court further held that mere fact that the child was asked to say about the occurrence and as to what she saw did not amount to tutoring. Therefore, we are of the view that the evidence given by this child witness (PW-6) inspired the confidence of the trial court, the court has rightly believed the evidence of this child witness (PW-6) and placed its reliance on the same.

In view of the above discussion, we are of the considered opinion that the finding of the trial court to the effect that the accused/appellant was the author of the crime and responsible for the death of Pratima Singh, as also as per the evidence of Dr. Smt. S. Paikra (PW-1) & report (Ex.P-2) at the time of incident Pratima Singh was carrying 8 months pregnancy and the male child died in the womb on account of non-supply of oxygen due to death of Pratima Singh for which the accused/appellant was responsible.

Learned counsel for the accused/appellant placing reliance on the judgment of the Hon'ble Apex Court in the matter of **Uday Singh V State of U.P.** reported in **2002 Cri. L.J. 4655** argued that in a sudden quarrel if the accused pressed the neck & chest of the deceased even then his act falls under the mischief of Section 304 Part-II of the IPC and that does not fall under the mischief of Section 302 of the IPC, as there was no intention to cause death.

We have perused the judgment cited by learned counsel for the accused/appellant, but on facts the above judgment is of no help to the accused/appellant for the reason, in that case facts

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were different. The facts of that case were that all of a sudden two parties started fighting, as a result of obstruction caused for digging of the foundation in the portion fallen in share of deceased and there was no evidence to show that the accused attacked the deceased with deadly or dangerous arms and it was only a hand to fist fight and in that the two accused held neck of the deceased with such force that it ultimately resulted in strangulation and death of the deceased, common intention to kill deceased cannot be inferred. More so, when it was very difficult to conceive as to how much pressure was applied by which accused on the deceased's neck so as to cause death. But if we look into the facts of the present case, the evidence of PW-8 Dr. Girdhar Singh- brother of deceased makes it clear that even prior to the date of incident the accused/appellant used to beat and harass the deceased on account of not bringing the dowry articles in the marriage and the deceased used to disclose this fact as and when she used to come to his place, deceased also wrote letter to him in which she explained the conduct of the accused. One of such letter written by her is Ex.P-7. The child witness (PW-6)- daughter of accused and deceased in her evidence has stated that on the fateful day first of all accused/appellant assaulted the deceased, thereafter, he pressed the neck of deceased and the medical evidence shows that the neck was pressed to the extent that even thyroid bone was fractured. The cumulative effect of all these things is that it can safely be inferred from the facts and circumstances of the case that the accused/appellant did that act

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in order to finish his wife, which can be inferred from the past conduct of the accused/appellant also. Therefore, we are of the considered opinion that on facts, it is a clear case in which accused/appellant was rightly held guilty for commission of murder of his wife and was rightly convicted for the same by the trial court.

As far as the offence under Section 316 of the IPC is concerned, under that offence also accused has been rightly convicted, for the reason that at the time of incident the deceased was carrying 8 months advance pregnancy and doctor has opined that male child died in the womb on account of non-supply of oxygen due to death of Pratima Singh for which the accused/appellant was responsible.

In the result, we do not find any substance in this appeal, same is liable to be dismissed and it is, accordingly, dismissed.

Consequently, M.(Cri.)P. No.880/05 also stands dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Roshan/-

(पीछे देखिये)